

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**DZ JEWELRY LLC d/b/a ZADOK
JEWELERS,
Plaintiff,**

vs.

**CERTAIN UNDERWRITERS AT
LLOYD’S, LONDON SUBSCRIBING
TO POLICY NO. SS0140418/7266,
Defendant.**

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CIVIL ACTION NO. 4:20-CV-03606

DEFENDANTS' MOTION FOR ENTRY OF FINAL JUDGMENT

Defendants Certain Underwriters at Lloyd's, London Subscribing to Policy SS0140418/7266 (“Underwriters”), pursuant to Rule 58 of the Federal Rules of Civil Procedure, ask the Court to order the clerk to enter final judgment against Plaintiff DZ Jewelry LLC d/b/a Zadok Jewelers (“Plaintiff”) based on the granting of Defendants' 12b(6) Motion to Dismiss on March 12, 2021 (Doc. 21).

1. Defendants request that judgment be set out promptly in a separate document as required by Federal Rule of Civil Procedure 58. Defendants have filed a Proposed Final Judgment for the Court's consideration and approval.
2. On October 21, 2020, Plaintiff filed an Original Complaint (Doc. 1) against Defendants. Defendants timely filed an answer (Doc. 6) on November 13, 2020. Defendants also filed a Motion to Dismiss Under Federal Rule of Civil Procedure 12b(6) For Failure to State a Claim (Doc. 5). Plaintiff responded to the Motion (Doc. 13) and Defendants replied to Plaintiff's response (Doc. 14).
3. After considering the briefing of the parties and argument of counsel, the Court found Defendants' 12b(6) Motion to Dismiss to be meritorious and granted the motion on March 12,

2021 (Doc. 21). The Court dismissed Plaintiff's claims without prejudice and granted Plaintiff leave to either amend its pleadings or notify the Court Plaintiff intends to stand on its original pleadings by March 25, 2021. On March 25, 2021, Plaintiff filed its Notice to the Court Regarding Its Intention to Stand on Original Complaint (Doc. 22).

4. When a court grants other relief not described in Rule 58(b), the court must promptly approve the form of the judgment, which the clerk must promptly enter. FED. R. CIV. P. 58(b)(2).

5. Thus, Defendants ask the Court to approve the form of Defendants' Proposed Judgment and order the clerk to enter the judgment for Defendants against Plaintiff declaring that all of the claims filed by Plaintiff's against Defendants are dismissed for Plaintiff's failure to state a claim pursuant to Rule 12b(6).

For these reasons, Defendants ask the Court to approve the form of Defendants' Proposed Judgment and order the clerk to enter the judgment.

Respectfully submitted,

HOLMAN FENWICK WILLAN

/s/ Gerard J. Kimmitt, II

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SS0140418/7266**

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CERTIFICATE OF CONFERENCE

Kristie W. Tobin, one of the attorneys for Defendants Certain Underwriters at Lloyd's, London, forwarded a copy of this Motion and Proposed Final Judgment to Donald Green, counsel for Plaintiff, on March 31, 2021, but no response was received regarding Plaintiff's position to this motion.

/s/ Kristie W. Tobin

Kristie W. Tobin

CERTIFICATE OF SERVICE

A true and correct copy of this document was served via the Court's EC/MCF electronic filing services on the following counsel on this 5th day of April 2021:

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